

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 191 of 1995

in

SPECIAL CIVIL APPLICATION No 14032 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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PALANPUR KARINA MERCHANTS

Versus

STATE OF GUJARAT

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Appearance:

MR SK JHAVERI for Petitioners  
MR HS MUNSHAW for Respondent No. 1

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE S.D.PANDIT

Date of decision: 19/06/96

ORAL JUDGEMENT(Per: Pandit J)

The petitioners in SCA No. 14032 of 1994 have preferred the present L.P.A. against the dismissal of the petition by the learned single Judge of this Court on 19.4.95. Respondent no.4 Palanpur Municipality had decided in the meeting of the General Body dated 13.11.81 to revise the octroi rate by passing necessary Resolution. Thereafter, a public notice was issued on 12.3.82 inviting objections to the octroi hike. Objections were received by the municipality. But it seems that no action on the same was taken and on 18.12.85, the Administrator of the said municipality gave public hearing of the said objections and after hearing the said objectors and considering their objections decided to give effect to the Resolution of the hike of octroi rates and then moved the State Government as per the provisions of the Gujarat Municipalities Act. Government thereafter passed an order dated 23.1.89 sanctioning the proposal of the municipality and thereafter a public notice was issued about the sanction and revised rates of octroi which were to come into effect from 1.10.89.

2. Present appellants-petitioners filed writ petition No.14032/95 on 29.12.94. The appellants herein contended that the respondents had not complied with the provisions of section 101(c) of the Gujarat Municipalities Act (hereinafter referred to as the Act) and therefore, the respondents levying of the octroi was affecting the fundamental rights of the appellants and the State Government had not applied its mind and had not considered the objections raised to the said hike for the octroi duty and therefore, in the circumstances, the appellants-petitioners wanted to quash the said decision of respondent no.4 who hiked the octroi rate.

3. The learned single Judge has considered all the objections on behalf of the appellants-petitioners and the cases cited on behalf of the appellants-petitioners and has come to the conclusion that the petition deserves to be rejected as none of the grounds raised by the appellants-petitioners could be accepted. He accordingly dismissed the said SCA on 19.4.95.

4. It is vehemently urged before us by Mr. Zaveri the learned advocate for the appellants that the learned single Judge ought to have held that though the

municipality passed a Resolution dt. 13.11.81, the municipality had decided to abandon the said Resolution in view of the fact that no action on the said Resolution was taken from 1982 to 1985. In order to appreciate this contention of Mr. Zaveri, it is necessary to consider the provision of section 101 (c) of the said Act, 1963. Said section reads as under:

"101(c). Any inhabitant of the municipal borough objecting to imposition of the said tax or to the amount or rate proposed or to the classes of persons or property to be made liable thereto or to any exemptions proposed may, within one month from the publication of the said notice, send his objection in writing to the municipality, the municipality shall take all such objections, into consideration, or shall authorise a committee to consider the same and report thereof; and unless it decides to abandon the proposed tax, shall submit such objection with his opinion thereon and any modifications proposed in accordance therewith, together with the notice and rules aforesaid to the State Government."

Thus it would be clear that the municipality, if wants to abandon its decision to raise in the octroi rate, then the municipality must decide to abandon the same. The act of the municipality is an act of the public body and a public body like municipality will have to take every decision by positive action i.e. by passing Resolutions. Hence any inaction on the part of the public body without passing a Resolution to that effect could not be treated or taken as a decision of the public body. Section 101 (c) of the said Act clearly says that the municipality has to consider the objections with its opinion thereon and forward the amended rules to the State Government unless it decides to abandon the proposed acts. When the section says that the municipality has to decide, it is quite clear that the decision must take place by way of Resolution of the municipality. Therefore, merely because there was inaction on the part of the municipality from 1982 to 1985, it could not be said that the municipality had decided to abandon its proposal to revise the octroi rates. Therefore, the view taken by the learned Judge that in view of the materials on record, it could not be said that there was an abandonment of the decision to revise the rates of octroi could not be said to be illegal or improper. Said decision is a decision of fact on the strength of the

materials before him and we do not find any reason to interfere with the said finding of the learned single Judge.

5. No doubt, Mr. Zaveri has cited before us the case of Jayantilal Naranbhai Shah & ors. vs. Dholka Municipality and others reported in 1983 GLR 597. Said case was also cited before the learned single Judge of this court and he has considered and dealt with the said decision in his judgment and has come to the conclusion that in view of the facts of the case before him, said case is not applicable. We are in agreement with the said view. The Chief Officer of the respondent -municipality filed an affidavit that he had considered the objections filed by the inhabitant of the municipality to the said revision of the octroi rates and had given his own opinion on the same and forwarded the said opinion along with his letter to the Director of Municipalities in order to get sanction of the revised rates. Said affidavit of the Chief Officer has been accepted by the learned single Judge. Therefore, it is the appreciation of the material on record by the learned single Judge and we do not find any reason to disagree with him.

6. The learned Judge has also found that present petition of the petitioner was bad on the ground of delay and laches. It is an admitted fact that public notice was issued on 29.8.89 informing the public at large that the revised octroi rate was to come into effect from 1.10.89. Present petition is filed by the petitioner on 29.12.94. It was vehemently urged by the learned advocate for appellants that another Association had filed a suit in the civil court and there was a stay order against the implementation of the said revised rates of octroi and said revised rates were not actually effected till December 1994, the petitioners non filing of the petition could not be taken as an act of delay. When the appellants wanted to challenge the revised rates of octroi, they ought to have challenged the same when the notification was issued in August 1989. When the appellants were not parties to the said suit and when the appellants are challenging the said revised rates as per the submissions, of Mr. Zaveri on independent and indifferent grounds, the appellants ought to have come to the court immediately after the said notification. The earlier civil suit brought by another Association was ultimately disposed of and no stay order was granted against the revision of octroi rates in the said suit order of Civil Judge was confirmed by the High Court. No doubt, present appellants-petitioners were not parties to that suit but the learned single Judge was quite

justified in taking into consideration of the said event. It must be noted that Regular Civil Suit No. 273/89 was filed against the revised rates of octroi by an Association and in that proceedings it has been found that said revised rates were not invalid or illegal and no injunction was granted in favour of the plaintiff of that suit. That circumstance could not be ignored while considering the claim of the present appellants though said decision could not affect the appellants claim by direct principle of res judicata.

7. Mr. Zaveri vehemently urged before us by citing the case of S. Ananthakrishnan vs. The State of Madras reported in AIR 1952(Madras) 395 that the revised rates are very high and they are affecting the fundamental rights to do business by the present appellants. Mr Zaveri drew our attention to the revised rates and has pointed out that some of the revised rates are more than four times the original rates. It must be mentioned that the municipality had not revised their octroi rates since 1963. The revision in the rates of octroi was taken after 20 years by the municipality and as a matter of fact, revised rates of octroi were coming into effect after 30 years. The Chief Officer of the municipality has filed an affidavit stating therein various reasons as to why the decision to revise the octroi rates was taken and how the municipality was in financial difficulty on account of old rates. If the revised rates of octroi of the municipality are taken into consideration then it would be clear that for certain commodities the rates are very hiked but at the same time octroi rates of some other commodities are reduced. Therefore, it could not be said that the revised rates are arbitrarily revised or that said rates were unreasonable. The learned single Judge has taken into consideration the said case cited before us and after considering the materials on record has come to the conclusion that from the material it is not possible to hold that there was any unreasonable restriction on the fundamental rights of the appellants-petitioners to carry on the business. We are in full agreement with the said decision of the learned single Judge and we do not find any reason to set aside the said reasoning.

8. Mr. Zaveri further urged before us that in the adjoining cities the Municipalities have not made the revision of octroi rates but whether the other municipalities are revising their octroi rates or not has

no bearing on the matter before us. Thus we hold that present Letters Patent Appeal deserves to be dismissed. We accordingly dismiss the Letters Patent Appeal with no order as to costs.

(C.K.Thakker.J)

(S.D.Pandit.J)

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